

CHAPTER 18
ADMINISTRATIVE REVIEWS AND
OTHER POST-ANTIDUMPING DUTY ORDER ACTIVITIES

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LIST OF ACRONYMS & ABBREVIATIONS

AD	ANTIDUMPING
AR	ADMINISTRATIVE REVIEW
CAFC	COURT OF APPEALS FOR THE FEDERAL CIRCUIT
CEP	CONSTRUCTED EXPORT PRICE
CCIA	CHIEF COUNSEL FOR IMPORT ADMINISTRATION
CIT	COURT OF INTERNATIONAL TRADE
COP	COST OF PRODUCTION
DOC	DEPARTMENT OF COMMERCE
EC	EXPORTING COUNTRY
EP	EXPORT PRICE
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
IA	IMPORT ADMINISTRATION
NME	NON-MARKET ECONOMY
NV	NORMAL VALUE
PM	PROGRAM MANAGER
POI	PERIOD OF INVESTIGATION

LIST OF ACRONYMS & ABBREVIATIONS

POR

PERIOD OF REVIEW

THE ACT

THE TARIFF ACT OF 1930, AS AMENDED

ANTIDUMPING
AGREEMENT

AGREEMENT ON INTERPRETATION OF ARTICLE IV
OF GATT, 1994

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References:

The Tariff Act of 1930, as amended (the Act)

Section 736(c) - expedited antidumping (AD) duty **administrative reviews** (ARs)

Section 751 - ARs of determinations

Section 777 - access to information

Section 778 - interest on certain overpayments and under payments

Section 779 - AD duty drawback treatment

Section 781 - prevention of **circumvention** of ARs

Section 782 - conduct of ARs

Department of Commerce (DOC) Regulations

19 CFR 351.212 through 219 - various provisions dealing with specific AR topics

19 CFR 351.218 - sunset (five-year) ARs

19 CFR 351.221 - AR procedures

19 CFR 351.222 - **revocations** of AD orders

19 CFR 351.225 - scope rulings

SAA

Section C.7 - imposition and collection of AD duties

Section C.9.a. and b - duration and review of AD orders

Section C.9.d - revocation of AD orders

Section C.11 - anti-circumvention

Antidumping Agreement

Article 9 - imposition and collection of AD duties

Article 11 - duration and review of AD duties

Article 18 - application of Article VI provisions to ARs

INTRODUCTION

Prior to the reorganization of Import Administration (IA) in 1996, the Deputy Assistant Secretary for Compliance was responsible for a variety of functions, including: 1) AD duty order administrative reviews (ARs), AD duty ARs of AD findings published by the Treasury Department, and ARs for suspension agreements; 2) scope clarifications; and 3) circumvention inquiries. Since the reorganization of IA in July of 1996, these functions

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as well as all investigative functions are now performed by all three Deputy Assistant Secretary groups within IA.

Although ARs begin about one year after AD orders or suspension agreements are published, there may be scope clarification requests, allegations of changed circumstances, etc., anytime after publication of the order. ARs may be deferred, in whole or in part, for one year under 19 CFR 351.213(c) if a deferral is requested and there are no objections from the exporter or producer, an importer of **subject merchandise** from that exporter or producer, or a domestic interested party. Expedited reviews may be requested under section 736(c) of the Act if certain stringent requirements are met. New shippers may also request expedited reviews under section 751(b) of the Act. AR procedures and practices for AD orders, AD findings, and suspension agreements are generally the same as those employed for investigations. See the chart in section IV of this chapter for a description of the major differences between an investigation and an AR.

I. ADMINISTRATIVE REVIEWS

A. Expedited Administrative Reviews

Under section 736(c) of the Act and 19 CFR 351.215, the DOC may perform an expedited administrative review for any manufacturer, producer, or exporter. Because the requirements for an expedited review are so strict and the procedures so demanding, very few of these reviews have been undertaken. The last expedited review took place in 1985; see Early Determinations of Antidumping Duties: Certain Carton Staples and Staple Machines from Sweden, 50 FR 3582 (January 25, 1985). See the Act and the CFR for information on the requirements for these types of reviews. Also, advise your supervisor or program manager (PM) immediately if you are contacted about the possibility of undertaking an expedited review.

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B. Annual Administrative Reviews of AD Duty Orders, AD Findings, and Suspension Agreements

The basic purpose of an annual AR is to determine the actual amount of AD duties that Customs will assess on imports of the subject merchandise during the **period of review** (POR) or to determine if a suspension agreement has been violated. In ARs for orders and findings, the DOC also establishes new cash deposit rates for entered subject merchandise for each of the companies reviewed. In some ARs, the DOC also determines whether the order or finding should be revoked with respect to a particular company or whether a suspension agreement should be terminated. See section II of this chapter for detailed information on revocations and **termination**.

The AR process begins approximately one year after publication of an AD duty order or suspension agreement. Each AD case has an anniversary month which corresponds to the month in which either the AD duty order or suspension agreement was published by the DOC or the AD finding was published by the Treasury Department. Each month the DOC publishes, as a courtesy, in the Federal Register (FR) a “Notice of Opportunity to Request Administrative Review,” which informs interested parties that they may request ARs. The “Opportunity Notice” specifically lists those orders, findings, or suspension agreements with an anniversary month corresponding to the month of publication of the “Opportunity Notice.” For instance, the June “Opportunity Notice” will list all those cases with the anniversary month of June.

At any time during the anniversary month, an interested party may request an AR of companies that produced and exported or exported the subject merchandise during the POR. Once the DOC receives such requests from specific firms, it initiates ARs for these companies. The DOC publishes a “Notice of Initiation” in the FR in which it lists the companies that will be subject to the AR.

If no review is requested for a particular firm, entries from that firm are assessed AD duties at the rate of deposit at the time of entry. The DOC sends automatic assessment instructions to the U.S. Customs Service for entries of subject merchandise from all firms for which no review is requested. In non-market-economy (NME) cases, it is frequently unclear precisely which companies are separate from other companies and, thus, which

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companies will be covered by the final results of review. Therefore, we also conditionally initiate on unnamed firms in NME cases. If there are no requests for reviews of suspension agreements, the DOC can self-initiate reviews if it feels there has been a possible violation. Always consult with your supervisor or PM if you feel that a conditional initiation for an unnamed NME company or a self-initiated review of a suspension agreement is warranted.

Once the DOC has initiated an AR for a specific company, the analyst responsible for that review sends that company a questionnaire requesting that it report all sales to the United States or, if the company has a very large number of United States sales, a sample of sales to the United States. The questionnaire also requests that the company report sales in the exporting country (EC) of merchandise which is comparable to that sold in the United States. The questionnaire may request only a sample of such EC sales. If the company does not have any such sales in the EC market, the DOC may ask the respondent to submit third-country sales or, if those are non-existent or unacceptable, **constructed value** information. A complete discussion of questionnaires for ARs is offered in Chapter 4. Questionnaires for reviews of suspension agreements are specifically tailored to the contents of the agreements. See your supervisor or PM if you need to issue a questionnaire for a suspended case.

Once the analyst receives the questionnaire response from a firm under review, the analyst reviews it and issues a supplemental questionnaire seeking clarifications and/or revisions to the questionnaire response. The petitioner, at this point or earlier, may allege that the respondent's EC or third-country sales are sold at prices below the **cost of production** (COP). Whenever we find that there are reasonable grounds to believe or suspect that sales have been made below COP, usually on the basis of a timely allegation by petitioner, the analyst issues a COP questionnaire to the respondent. The company must then submit complete COP information for its EC or third-country sales. The DOC will initiate a COP inquiry at the outset of the review if it disregarded comparison-market sales below the COP in the previously completed segment of the case, be it in an earlier

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review or the investigation. See Chapter 5 for detailed information on how to analyze a questionnaire response. For a complete discussion of sales below the COP, refer to Chapter 8.

Annual **verifications** are not statutorily required in ARs for AD orders/findings. The Act requires verification if no verification was conducted in the previous two ARs, the company under review has requested revocation, or the petitioners or other domestic interested parties have shown good cause for verification. When a verification is required or when we choose to verify, the analyst issues a verification outline to assist the respondent in preparing for verification. The analyst then conducts the necessary verifications and writes verification reports, after which he or she analyzes the submitted data, calculates **dumping** margins, drafts an analysis memorandum, and prepares a “Notice of Preliminary Results of Administrative Review.” Under 19 CFR 351.307(a), the DOC may verify information submitted for the AR of a suspension agreement as it sees fit. See Chapter 13 for detailed information on the verification process. See section 782(i) of the Act for statutory verification requirements. Also see Chapter 12 for information on the preparation of a notice of preliminary results of review and 19 CFR 351.307 for information on verifications.

After issuing the “Preliminary Results” FR notice, the analyst discloses the analysis and calculations to interested parties that request disclosure and conducts a disclosure conference, if requested by interested parties. At a disclosure conference, the analyst answers any questions about how the calculations were done that interested parties may have after their review of the analysis memorandum and dumping calculations. Within thirty days after publication of the “Preliminary Results” in the FR notice (or by the date stated in the notice), interested parties may submit written comments (case briefs), which generally are followed within five days by interested parties' written rebuttal comments (rebuttal briefs). Interested parties may request a hearing to present orally the issues that they have briefed. If requested, a hearing is usually held seven days after submission of rebuttal comments. See Chapter 11 for detailed information on disclosure conferences. Also see Chapter 14 and 19 CFR 351.309 and 351.310 for more information on hearings and briefs.

The analyst then reviews the comments received, drafts responses to each of them, and

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prepares a “Notice of Final Results of Administrative Review.” This notice responds to the comments we received by stating our positions and indicating any changes in the dumping calculation which result from comments received. After publication of the final results, if requested, the analyst releases to requesting interested parties both the final analysis memorandum and the revised dumping calculations, and he or she may again hold a disclosure conference. Ministerial error claims can be submitted for final results calculations. See Chapter 11 for more information about ministerial errors. Also see 19 CFR 351.224 for information on procedures for ministerial errors.

Except for the final results disclosure conference and the disposition of any ministerial error claims, each of the above steps must be accomplished within the year (see Chapter 12 for information on postponements of determinations for ARs) that the DOC has to complete each AR, although, as stated above, we do not always conduct verifications. In many of these steps as is the case for investigations, the analyst works with a staff attorney from the Office of Chief Counsel for Import Administration (CCIA). Although one full year may appear to be a great deal of time, in reality, if each of these steps is undertaken, it allows few deviations from a relatively strict timetable.

Finally, for AD orders and findings the analyst issues instructions to U.S. Customs, indicating the new deposit rates which will be in force for future entries, i.e., those made after publication of the “Final Results” in the FR. For ARs of suspension agreements that result in final negative determinations, no further actions are required. If, however, a violation is detected, see Chapter 15 for information on how to proceed. Also see section III of this chapter.

If no interested parties challenge the DOC's determination for an AD order or finding in the Court of International Trade (CIT), the analyst issues liquidation (appraisement) instructions to U.S. Customs stating the AD duties due as a result of the review on all entries made during the POR for the specific companies reviewed (as discussed above, entries from companies not subject to review are liquidated under the automatic

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assessment procedures immediately following publication of the “Notice of Initiation” except in the case of an NME review). See part G. of this section for information on the issuance of liquidation instructions.

If interested parties do challenge the final results of review, they frequently obtain an injunction against liquidation of the entries during the POR. The analyst should check with the case attorney in CCIA and, if no injunction is requested, the analyst may proceed to issue liquidation (appraisement) instructions. If an injunction is requested, suspension of liquidation is continued. The analyst also prepares the court record which includes all documents in the record of the AR. This court record, which is submitted to the CIT, is the basis for the CIT's review of the DOC's final results and all arguments made by the interested parties in the course of the ensuing litigation. The CIT relies on this record to determine whether the DOC's determination was based upon substantial evidence on the record and was otherwise in accordance with the law.

If the CIT affirms the DOC's determination, no further action is necessary. If, however, the CIT agrees with any of the complaints filed, it remands the DOC's final results of review with specific instructions. The DOC then follows these instructions in making a redetermination on remand. If the CIT affirms this redetermination and no party appeals the redetermination to the Court of Appeals for the Federal Circuit (CAFC), the redetermination stands. If not, either the CIT or the CAFC may remand the final results again. If any changes in our analysis result from these remands, the analyst prepares a “Notice of Amended Final Results” after the CIT decision or, if appealed, after the CAFC affirms the amended results. Then liquidation instructions, reflecting the amended results, are sent to U.S. Customs. See Chapter 2 for information about the administrative record of the AR. Also see Chapter 19 on court records and litigation.

C. No Shipment Responses in Administrative Reviews

If an exporter or producer that is named in a “Notice of Initiation” has no shipments (entries) during the POR, there is generally nothing to review and the company keeps its existing deposit rate. This is clearly the case for EP sales where the DOC reviews POR entries (or shipments if exact entry data is not available -- the presumption being that there would be entries in close proximity to most shipments) and for CEP transactions

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where the company has POR sales but no entries (shipments) into the United States. See Final Results of Antidumping Administrative Review: Silicon Metal from Brazil, 62 FR 1997 (January 14, 1997).

Upon receipt of a no shipments claim in response to an AR questionnaire, the DOC queries the Customs Service to determine if its records support the claim. If Customs confirms that there are no shipments (entries), the DOC, under 19 CFR 351.213(d)(3), may rescind an AR for that company if it concludes that there were no shipments during the POR by publishing a “Notice of Rescission (or Partial Rescission) of Antidumping Administrative Review” in the FR. The FR notice should specify that the company had no shipments and, accordingly, there will be no liquidation instructions for the company for the POR. The company’s duty deposit rate would remain the same as from the last AR or the investigation if this is the first AR for the AD duty order.

D. Administrative Reviews for New Exporters and Producers (New Shipper Reviews)

Under section 751(a)(2)(B) of the Act, new exporters and producers can receive an expedited AR if 1) they did not export the merchandise subject to the AD order during the POI for the investigation (see 19 CFR 351.214(b) for information on required producer or exporter certifications), and 2) they are not affiliated with any exporter or producer that did export during the POI. Additionally, under 19 CFR 351.214(c), the request for review must be made within one year of the **date of sale** or exportation of the merchandise. If these criteria are met, the DOC can commence a new shipper review in the month following the 6-month period in which the request is made. The 6-month period may begin in either the month after the anniversary month or semi-annual anniversary month (which is 6 months after the anniversary month). The DOC can allow the posting of a bond in lieu of cash deposits for potential AD duties until the review is completed. See Initiation of New Shipper Antidumping Duty Administrative Review: Certain Pasta from Italy, 62 FR 8927 (February 27, 1997).

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Time limits for preliminary and final results and extensions of the due dates for new shipper ARs are as follows: 1) within 180 days from the date of initiation of the review for the preliminary results; 2) within 90 days of the date of the preliminary results for the final results; and 3) if the DOC deems the review to be extraordinarily complicated, the preliminary date can be extended to 300 days and the final can be extended to 150 days (Section 751(a)(2)(B)(iv)) (see Preliminary Results of New Shipper Antidumping Administrative Review: Certain Forged Steel Flanges from India, 61 FR 51261 (October 1, 1996)).

E. Changed Circumstances Administrative Reviews

In addition to an annual AR, interested parties can request a changed circumstances review of an AD duty order. Under section 751(b)(4) of the Act, in the absence of good cause, the DOC may not review a final determination or suspension agreement in an investigation less than 24 months after the date of publication of the determination or the suspension.

The DOC determines on a case-by-case basis whether changed circumstances sufficient to warrant a review exist. The DOC will only initiate a changed circumstances review if the factors underlying its initial determination have changed sufficiently to warrant such a review. The DOC may revoke an order (or terminate a suspension) in whole or in part agreement through a changed circumstances review.

Examples of changed circumstances that have been found sufficient to warrant a review include 1) a country becoming newly entitled to an injury determination by means of accession to the GATT, and 2) the unification of a country, e.g., Germany. The most common changed circumstance sufficient to warrant a review and resulting in the revocation of an order or part of an order is when it is no longer of interest to domestic interested parties. The DOC's regulations dealing with changed circumstances reviews can be found in 19 CFR 351.221(c)(3) and 351.222(g).

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F. Five-Year Reviews (Sunset Reviews)

Under section 751(c) of the Act, five years after the date of publication of an AD duty order or suspension agreement the DOC shall conduct a review to determine if revocation of these actions would be likely to lead to continuation or recurrence of **dumping**. The ITC must also conduct five-year reviews. See Chapter 16 on injury determinations for information on ITC activities.

Notice of initiation of a five-year review must be published in the FR not later than 30 days prior to the fifth anniversary date of the AD duty order or suspension agreement requesting willingness to participate in the review by furnishing information requested by the DOC and the ITC. If no response is received from an interested party, the DOC will issue a final determination within 90 days after initiation of the review, revoking the AD duty order/finding or suspension agreement to which the FR notice of initiation relates. If an inadequate response is received, the DOC may issue, within 120 days of the initiation of the review, a final determination revoking the AD duty order or suspension agreement without further investigation. If the responses are complete, the DOC shall make its determination within 240 days after the review is initiated. If the DOC's determination on revocation is affirmative, the ITC shall make its final determination within 360 days of the initiation of the review. Extensions of these time limits are possible if the review is deemed extraordinarily complicated. See section 751(c)(5) of the Act and 19 CFR 351.218. Also see the special rules for five-year reviews for "transition" orders in section 751(c)(6) of the Act.

G. Appraisement Instructions

The POR for an AR of an AD duty order/finding or suspended investigation can range anywhere from 12 to 17 months. Once the AR is finalized for an AD duty order/finding, appraisement instructions are issued to the Customs Service covering the entries/sales for the period reviewed unless litigation activities commence within 30 days of the publication date of the final results. Appraisement instructions are sometimes referred to as liquidation or assessment instructions or "master lists." See 19 CFR 351.212 for detailed information on appraisement instructions for AD duty orders.

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Appraisement instructions are the implementation of our final results for the AR. If the total duties for a company are found to be \$10,000,000 on \$100,000,000 net U.S. value, the weighted-average margin in the DOC's final results would be 10%. Appraisement instructions from the DOC would give Customs the authority to collect special dumping duties and refund any cash deposits over the assessed amount. Part 4 of this section describes the preparation of the instructions. .

If the DOC does not advise Customs of the results of its AR once the AR is completed, 1) we have not implemented our final results of review; 2) importers do not receive refunds if their cash deposits of estimated AD duties were higher or the Treasury does not receive additional duties due if they were lower; 3) entry and importers are unable to settle their accounts with customs; documentation piles up at ports of entry; and 4) the DOC has not fully applied the AD law.

Types of appraisement instructions

a. "Master Lists"

Master lists are entry or sale-specific instructions on how to determine the AD duty for the entries. Generally, the DOC issues master lists only for large items that are easily identifiable like large power transformers and mechanical transfer presses.

b. Percentage instructions

Percentage instructions for appraisement are based on entered value. The percentage amount is calculated by dividing duties due by the total entered value of the sales we analyzed. We ask for this information in the questionnaire we send at the outset of the AR.

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c. Special instructions

Sometimes it is appropriate to tell customs to collect antidumping duties due per unit (e.g., \$1.25/MT). Always consult with your PM if you think this is a more appropriate method of instructing Customs.

Preparation of appraisal instructions

The instructions that you send to Customs depend on the case. At a minimum Customs needs the following: 1) the POR; 2) a description of the merchandise; 3) the company name and the nine-digit case number; 4) the appraisal rates (generally given on an importer-or exporter-specific basis); 5) implementation instructions, including interest and reimbursement information; and 6) the appropriate boiler-plate language for the type of instructions that are involved. Note that the DOC's Customs Liaison Team has prepared a package of standard language for all AD e-mail transmissions to Customs. You must use the standard format that fits your situation when preparing appraisal instructions or Customs will not accept your document. See your supervisor or program manager if you cannot find the appropriate language for your instructions.

You should incorporate the programming language which will calculate your appraisal rates into your dumping analysis program for the preliminary and final results of the AR. The DOC has also started to explain in the preliminary results which of the various approaches to liquidation it intends to take so that parties can comment on this very important aspect of implementation of the AD law. This way, appraisal instructions will be ready to go to Customs when the final results publish in the FR.

If there is no litigation, instructions should go out 31 days after the publication of the DOC's final results. If litigation commences and parties obtain injunctions from the court to prohibit the liquidation of applicable entries, appraisal instructions will be in the file for later reference. If you haven't included the liquidation calculations in your final margin calculations, you should prepare them and put them in the file (but they won't be part of the court record) for later access upon completion of litigation. Given the length

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of time litigation can take, it is imperative that you include the calculations in your computer program. That way, if there's a remand, parties will see the effects of the remand on the AR assessment rates that were calculated and, at the conclusion of the litigation, you will be ready to issue the DOC's final appraisalment instructions to Customs.

The questionnaire now asks respondents to provide the entered value of the sales transactions they are reporting for our reviews. Always check your response when you're preparing your supplemental questionnaire to confirm that you have received entered value information for every transaction. If you haven't received entered value information for every transaction, reiterate the request and, if the respondent cannot submit it, instruct the respondent to explain why it cannot. In such cases, we may have to estimate the entered value or issue per unit appraisalment instructions. Always see your supervisor or PM if an estimate is necessary.

You should take care to note differences between EP and CEP appraisalment instructions because there are different types of importers involved.

- 1) In CEP appraisalment situations, the importer is affiliated with the exporter. Therefore, you will calculate an assessment rate using this calculation:

$$\frac{\text{Total Duties Due on CEP Calculations}}{\text{Total Entered Value of CEP Sales During the POR}}$$

This will yield an appraisalment percentage figure (which is likely to vary from the weighted-average margin which is calculated on the basis of CEP). In this situation, the appraisalment instructions will say:

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"For merchandise exported by ABC Ltd. and imported by its subsidiary, ABC Corp., entered or withdrawn from warehouse for consumption during the period August 1, 1994, through July 31, 1995, assess an antidumping liability of XX percent of the entered value."

- 2) In EP appraisalment situations, importers are not affiliated with the exporter. In these situations, appraisalment instructions must be by importer. Calculate importer-specific instructions as follows:
- a. Sort your transactions by customer code and generate the total dumping duties due and the total entered value for each customer to yield a percentage assessment rate. In this situation, the appraisalment instructions will say:

For merchandise exported by ABC Ltd. and imported by the following importers entered or withdrawn from warehouse for consumption during the period August 1, 1994 through July 31, 1995, assess antidumping liabilities of the following percentages of the entered value:

<u>Importer</u>	<u>Percent</u>
Austin Tunes	14.3
Mega-Mall Music	0.0
Seattle Sings	7.3

- b. In certain cases sales to the United States are made through resellers (or trading companies) and the importers is unknown. In such cases, appraisalment instructions would be issued on an exporter/importer specific basis such as:

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<u>Importer/Exporter</u>	<u>Percent</u>
Austin Tunes	14.3
Mitsui trading Co.	2.0

- 3) If the affiliated party in the United States is the importer of record for both CEP and EP sales and respondent has reported that there are no other importers of its merchandise, then you will calculate an assessment rate for all POR sales, both EP and CEP, and the instructions will pertain to all sales by the parent that are imported by that affiliated party. You will calculate the assessment rate as follows:

Total Duties Due on CEP and EP Calculations
Total Entered Value of all Sales During the POR

The appraisement instructions will say:

For merchandise exported by ABC Ltd. and imported by its subsidiary, ABC Corp., entered or withdrawn from warehouse for consumption during the period August 1, 1994 through July 31, 1995, assess an antidumping liability of XX percent of the entered value.

If your case involves large items for which a master list is feasible and appropriate, you should prepare instructions with very specific information. Because you are tying an analyzed sale to an entry, if you cannot provide specific information, a master list probably is not appropriate. Here is an example of such information:

LARGE CONSTRUCTION CRANES FROM FRANCE
A-427-002-003
ABC Electric Mfg. Co., Ltd.
June 1, 1994, through May 31, 1995

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<u>Entry Date</u>	<u>Port</u>	<u>Unit Serial #</u>	<u>Importer</u>	<u>U.S. Price</u>	<u>Duties</u>
12/2/94	New York	34987-2	Builders Inc.	\$123,890	- 0 -
4/13/95	New York	34987-3	Builders Inc.	\$114,987	\$5,443
5/26/95	Baltimore	35098-8	Johnson Co.	\$223,832	\$30,159

In this case you would have calculated a weighted-average margin for your final results of review and future cash deposit amount for ABC Electric Mfg. Co., Ltd as 7.7%:

<u>Total Dumping Duties Due</u>	<u>\$35,602</u>
Total U.S. Price	\$462,709 = 7.7%

Our standard language in FR notices (“(i)individual differences between U.S. price and **normal value** may vary from the percentage listed above”) is another way we alert the public that the rate in the FR may not be the rate we instruct customs to use to collect the final duty amount.

- f. Customer names and appraisement rates are business proprietary. Customs does not release them except to the importer.

Special Appraisement Topics

- a. Sampling procedures

Keep liquidation in mind if a sampling methodology is required. In general, the sampling of companies should not affect preparation of the instructions. If you do a time sample, such as in the antifriction bearings cases, some additional math is necessary.

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c. Concurrent countervailing (CVD) duty order

If there is also a CVD duty order on your product and export subsidies are involved, you must adjust your instructions to reflect these subsidies. See section 772(c)(1)(C) of the Act. If your AD appraisement rate is 10 percent and for the **period of review** there was a CVD appraisement rate, based on export subsidies of 0.91 percent, you would instruct Customs to collect 9.09 percent of the entered value for the applicable entries. Always discuss your appraisement plans for your AD cases with concurrent CVD duty orders with the case analyst responsible for the CVD duty order.

c. de minimis margins

19 CFR 351.106(c) requires that for ARs we treat any margin that is less than 0.5 percent ad valorem on an importer-specific basis as de minimis and that we instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise to that importer during the relevant **period of review** made by any person for which we calculate a de minimis assessment rate.

d. Customs Module update

You must ensure that the person with access to the Customs AD/CVD Module updates the company-specific screens as soon as Customs tells us the message number. That way, import specialists in the field will know to look for an e-mail message concerning liquidation for a specific POR.

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II. REVOCATIONS OF AD DUTY ORDERS/AD DUTY FINDINGS AND TERMINATIONS OF AD SUSPENSION AGREEMENTS

The term “revocation” refers to the end of an AD proceeding in which an AD duty order or finding has been issued. The term “termination” means the end of an AD proceeding in which the investigation was suspended based on a suspension agreement. Generally, these actions cannot occur unless the DOC has conducted one or more ARs under section 751 of the Act.

A. Revocation or Termination Based on an Absence of Dumping

Under section 751(d) of the Act, the DOC may revoke an AD order/finding or terminate an AD suspension if all exporters and producers covered by the action have sold the merchandise at not less than normal value (NV) (see Chapter 8 for an explanation of NV) for a period of at least three consecutive years and it is not likely that the exporters or producers will sell the merchandise at less than NV in the future. See Final Results of Antidumping Administrative Review and Partial Revocation of Antidumping Duty Order: Fresh Cut Flowers from Mexico, 61 FR 63825 (December 2, 1996), Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from Germany, 61 FR 49729 (September 23, 1996), Final Results of Antidumping Duty Administrative Review: Television Receivers from Japan, 55 FR 11420, 11422 (March 20, 1990), and Toshiba Corporation v. U.S., 15 CIT 597, 599 (1991), for examples of situations where requests for revocation were denied. If a firm was found to have dumped merchandise in a past segment and if it meets the criteria cited above, it must in addition submit a certification that it will not dump in the future and agree to immediate reinstatement in the order/finding if the DOC concludes it has sold at less than NV subsequent to the revocation. See Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order: Forged Steel Crankshafts from the United Kingdom, 62 FR 16771 (April 8, 1997).

In general, the DOC will not revoke an AD order/finding or terminate a suspension unless it has conducted a review of the first, third, or subsequent years in the AR review process. For purposes of revocation or termination, the DOC does not have to review the “intervening” years, i.e., the second year if a three- year period is being examined or the

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second, third, and fourth years if a five-year review is involved. However, the DOC must be satisfied that during each of the years in question there were exports to the United States in commercial quantities of the subject merchandise to which a revocation will apply.

Requests for revocations or terminations from exporters or producers may be made during the third and subsequent anniversary months of the AD order/finding or suspension agreement. See 19 CFR 351.222(e) for the requirements of these requests. These types of requests are considered by the DOC to include a request for an AR and, accordingly, the DOC undertakes the appropriate AR per the requirements of 19 CFR 351.213 when they are received. If a request for revocation is received after the anniversary the DOC generally will not consider it.

Procedural requirements for revocation and termination requests found in 19 CFR 351.222(f) involve the following: 1) verification; 2) publication of receipt of request for revocation as part of the FR announcing the initiation of an administrative review; 3) publication of “Intent to Revoke” or “Intent to Terminate” notices as part of the FR announcing the preliminary results; 4) publication of a notice of “Revocation of Order” or “Termination of Suspension” as part of the final results FR notice if the DOC final determination is affirmative; and 5) instructions to the Customs Service in the event of a revocation (see this section of the DOC regulations for more information). If a firm requests revocation, that request will also be considered a request for review in the qualifying year if the request does not specifically request review.

The DOC may revoke for a non producing exporter of subject merchandise. Normally, this revocation will apply only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for revocation.

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B. Revocation or Termination Based on Changed Circumstances

Under section 751(d) of the Act, the DOC may revoke an AD order/finding or terminate a suspension agreement based on a changed circumstances request if it concludes that 1) producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in whole or in part for an order or for a suspended investigation, or 2) other changed circumstances sufficient to warrant revocation or termination exist. In the absence of good cause, the DOC may not undertake this type of review until 24 months have elapsed since the time of the order/finding or suspension agreement. Also note that the ITC can revoke an order/finding based on changed circumstances involving its material injury determination. See 19 CFR 351.222(g) and (h) for other requirements and procedures associated with changed circumstances revocations and terminations involving the DOC and the ITC. Also see Chapter 16 for information on ITC actions.

C. Revocations or Terminations Based on Five-Year Reviews (Sunset Reviews)

In the case of a sunset review, the DOC will revoke an order or terminate a suspension agreement if: 1) it determines that these actions would not lead to a continuation or recurrence of **dumping**; and 2) the ITC determines that material injury would not be likely to continue or recur. See section 751(d) of the Act and 19 CFR 351.222(i) for more information on revocations or terminations based on five-year reviews.

III. SCOPE DETERMINATIONS

Issues often arise involving whether or not a particular product belongs within the scope of an AD duty order/finding. These situations can involve product descriptions, merchandise completed or assembled in the United States or other foreign countries, minor alterations, or later-developed merchandise. Most often these types of allegations are made by importers and domestic interested parties although the DOC may self-initiate

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a scope investigation.

Under 19 CFR 351.225(d), if there is sufficient information in the application for a scope ruling filed by the domestic interested party, the DOC will issue a final ruling based on the application. If this is not the case, then the DOC will initiate a further inquiry under 19 CFR 351.225(e) and (f). If a further inquiry is undertaken, questionnaires may be sent and verification of responses may take place. Whenever the DOC determines that a scope inquiry presents significant difficulty, it will issue a preliminary scope ruling. Comments and rebuttal comments can then be filed by the parties. The DOC will then publish a final scope ruling. Under 19 CFR 351.225(f)(5), the DOC will normally issue a final scope ruling in an inquiry within 120 days from the date of the initiation of the inquiry for scope inquiries involving product descriptions. For scope inquiries involving products completed or assembled in the United States or in other foreign countries, minor alterations, or later-developed merchandise, the DOC will normally issue its final ruling within 300 days. See section 781 of the Act for detailed information on the various types of circumvention that could result in an application for a scope ruling. Also see 19 CFR 351.225 for information on all types of scope inquiries.

A. Scope Determinations Based on Descriptions of Products

Each AD order or finding covers a specified "class or kind" of merchandise (subject merchandise) produced in a specified foreign country. This "class or kind" of merchandise subject to investigation, referred to as the "scope" of the investigation, becomes the scope of the AD duty order.

After an AD order is issued and for AD findings issued previously by the Treasury Department, the DOC frequently is called upon to determine whether particular products fall within the scope of that order or finding. This usually happens because the descriptions of merchandise contained in the DOC's and Treasury's determinations were written in general terms. In performing this task, the DOC must analyze the request using the information sources cited in 19 CFR 351.225(k), i.e., the description of the merchandise contained in the petition, the initial investigation, and the determinations of the DOC and the International Trade Commission (ITC). When the preceding information is not dispositive, then the DOC must further analyze the situation based on

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the following criteria to determine whether or not the product is within the scope of the order: 1) the physical characteristics of the product; 2) the expectations of the ultimate purchasers; 3) the ultimate use of the product; 4) the channels of trade in which the product is sold; and 5) the manner in which the product is displayed and advertised. See Diversified Products v. United States, 572 F. Supp. 883 (1983), and Kyowa Gas Chemical Industry Co., Ltd. v. United States, 582 F. Supp. 887 (1984), for more information on the aforementioned criteria.

As mentioned above, the analysis may take place without a formal inquiry if the record is dispositive of the issue. If the record is not dispositive, the DOC must initiate a formal scope inquiry wherein it solicits comments from interested parties.

B. Scope Determinations Based on Circumvention Inquiries

Circumvention inquiries are designed to address actions taken by the exporter or manufacturer, subsequent to the imposition of an AD duty order, which circumvent the order, i.e., avoid AD duties. Such actions include relocation of assembly/completion operations to the United States or some other foreign country, minor alteration of the subject merchandise, or later-developed merchandise. These actions may result in the exporter's ability to continue engaging in price discrimination without being subject to AD duties.

If the DOC receives an application for a ruling containing sufficient evidence of circumvention of an order or finding, then an inquiry is initiated in which the DOC will solicit information regarding the specifics of the alleged circumventing actions. The DOC examines many factors in making a determination of circumvention; chief among them are the following: 1) the determination of whether the amount of value added in the United States or third-country assembly/completion facilities is "small;" 2) whether alterations to the merchandise in form or appearance are minor; and 3) whether a later-developed product fits the five criteria shown in section 781(d) of the Act (see the five criteria cited above for scope inquiries based on the description of the merchandise -- they are identical to the 781(d) criteria). The DOC's anti-circumvention regulations can be found at 19 CFR 351.225. Also see section 781 of the Act.

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IV. DIFFERENCES BETWEEN CONDUCTING INVESTIGATIONS AND ADMINISTERING AD DUTY ORDERS

The narrative and chart that follow describe and list many of the differences between investigations and ARs. Some of the differences noted are not explained in great depth because other chapters of this manual provide a complete discussion of the specific analysis and procedural matters in question. If you have any questions concerning this section, consult with your supervisor or PM.

A. Procedures and Analysis for Investigations and Administrative Reviews

A number of differences exist in the procedures and analysis for investigations and ARs. The most significant ones are as follows:

1. "Opportunity to Request Administrative Review" and specialized "Initiation" notices are published for ARs. The "Opportunity" notices list all AD cases whose anniversary month is the present month and notify interested parties that an AR may only be requested in writing during the anniversary month. Neither the regulations nor the law require that we publish the "opportunity" notice but we do so as a courtesy.

"Initiation" notices list all companies that will be subject to an AR, based on requests received during the anniversary month.
2. For investigations, the DOC selects which specific firms it will investigate. For ARs, unless sampling or other limitations are in place, petitioners, importers, resellers or manufacturers of the subject merchandise may request that the Department examine specific firms.
3. For an AR, each and every U.S. sale made by every firm under review is examined, whereas there is considerable flexibility in determining which sales are examined in an investigation for an individual company. For an AR, the DOC may not review each and every sale if it decides to select a sample but, even then, it cannot intentionally exclude any given group of sales from the

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possibility of selection as part of the sample. Also, in an investigation, the DOC is required to investigate all the firms which sold in the United States during the **period of investigation** (POI) although there are some exceptions to this rule.

4. The POI for an investigation is typically 12 months (six months for a NME investigation). The POR for an AR is usually 16-18 months for the first AR (because it usually includes the time period between the preliminary determination and the order at the investigative stage) and 12 months for all subsequent reviews.
5. While the DOC investigates sales within the POI, it may review both sales and entries made during the POR.
6. For investigations, weighted-average U.S. prices are normally compared to weighted-average normal values (NV) for the POI. For ARs, the DOC compares individual U.S. prices to NVs based on monthly weighted-averages. For ARs where no sales (and, thus, no monthly weighted-average price) of comparable merchandise occurred in the EC market during the month of the U.S. sale, the DOC will attempt to find a monthly average price one month prior, then two months prior, and then three months prior to the month of the U.S. sale. If unsuccessful, the DOC will then look one month after and finally two months after the month of the U.S. sale. This practice is commonly referred to as the 90/60-day guideline. If there are no sales in this period, NV is based on constructed value.
7. For investigations, the DOC is required by law to verify each respondent's questionnaire response whereas for ARs it has some flexibility in its regulations in determining which respondent firms' responses to verify and when such verifications will occur.
8. For ARs, the DOC only refers its affirmative preliminary and its negative or affirmative final determinations to the ITC when it is conducting an anti-circumvention inquiry (which is not technically an administrative review)

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whereas for investigations the DOC always reports its results to the ITC since the AD margin may be used in the ITC's final determination of injury.

9. Upon a showing of ministerial error in an investigation, the DOC will issue a revised preliminary determination if certain conditions are met. DOC does so because the preliminary duty rates are used as bonding rates until it publishes its final determination. The published DOC preliminary rates for an investigation also serve as a "cap" on the amount of actual duties that may ultimately be collected on entries between the preliminary determination and issuance of the ITC's published final determination. The cap applies even if the DOC finds in its first administrative review that the margins of dumping are in fact higher. For ARs, the DOC will rarely issue revised preliminary results because the preliminary results have no effect on cash deposit rates.
10. If the margins of dumping found in an AR are above the rates deposited on entries subject to the review, then the importer must not only pay duties to make up the difference between the deposit rate and the actual calculated margin, but it must also pay the interest accumulated since the date of deposit (date of entry) on that amount. If the deposit rate is higher than the actual calculated dumping margin, then the importer receives a refund and also receives interest on the refunded portion dating from the date of deposit of estimated antidumping duties. The only exception to this practice is the cap discussed in point 9 above.

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**B. U.S. Customs Service-Related Differences for Investigations and
Administrative Reviews**

Because of the nature of the AR function, DOC interacts with the U. S. Customs Service concerning certain issues that are not addressed in the course of an investigation. These issues are due in large part to the fact that, while the DOC establishes bonding and cash deposit rates during an investigation, during an AR it is responsible for establishing the final AD duties for imports when entries are finalized or liquidated and for ensuring enforcement of the AD law. IA's Customs Liaison Team meets monthly with Customs officials to discuss solutions to problems and to facilitate the suspension of liquidation and assessment of antidumping duty processes. If you have a Customs related problem or suggestions on how to improve our interactions with Customs, consult with your supervisor or PM first and then contact the Customs Liaison Team

1. As a result of an AR, the DOC issues liquidation (appraisal) instructions for imports subject to an AD duty order. These instructions are either for automatic assessment of duties when no review is conducted or for assessment based on the final results of a review. The DOC issues liquidation instructions in an investigation only in the event of a negative preliminary determination by the ITC or a negative final determination in an investigation by the DOC or the ITC.
2. For ARs, the DOC regularly recommends to the Customs Service resolutions regarding Customs protests (disputes) filed by importing firms. Protests allege incorrect assessment of antidumping duties on entries by the Customs Service. Customs protests are not part of the investigation process.
3. For ARs, the DOC advises Customs of scope changes based on interpretations of the description of the class or kind of merchandise and affirmative circumvention determinations.
4. These instructions are either for automatic assessment of duties when no review is conducted, assessment when a review is rescinded due to withdrawal

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- of request for review, or assessment based on the final results of review.
5. Sometimes the final results of an administrative review result in revocation of the order in whole or in part. If so, we instruct the Customs Service to discontinue suspension of liquidation on future entries.
 6. Between the preliminary determination and issuance of an order for an antidumping or countervailing duty investigation, during expedited antidumping reviews, and until completion of a new shipper review, importers have the option of posting either a cash or a bond as security in lieu of cash deposit for each entry of the subject merchandise. Generally, after issuance of an order and during the course of administrative reviews, importers no longer may post a bond or security, but they must instead make a cash deposit of estimated duties.
 7. If in an investigation we preliminarily determine that dumping or countervail able subsidization has occurred, we provided the Customs Service with a rate for use in suspending future entries of the subject merchandise. However, for the preliminary results of an administrative review, new shipper review, or expedited review, we do not provide the Customs Service with a rate at the prelim since future entries are only affected by the final results of review.

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C. Administrative Reviews/Investigations Analytic and Procedural Chart

This chart lists the primary analytical and administrative procedures for ARs and investigations and the procedural differences/similarities between the two functions.

Action	Investigations	ARs
1. Opportunity Notice	Not applicable	Monthly notice of opportunity to request administrative review of AD order, finding, or agreement
2. Initiation Notice	Initiation of initial investigation	Initiation of administrative reviews
3. AD Questionnaires	Sent only to DOC-selected firms	Sent only to firms requested for review
4. Period Investigated/Reviewed	Usually 12 months, six months for NME investigations	16-18 months for 1st review, 12 months for succeeding reviews
5. Supplemental Questionnaires	Sent soon after receipt of questionnaire responses, as needed	Same
6. Questionnaire Analysis		

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Action	Investigations	ARs
- U.S. Sales	Weighted-average POI	Individual
- NV	Generally one average for the 12-month period	Generally a monthly average
- Adjustments (movement, cir. of sale, level. of trade, price, difmer, etc.)	Yes	Yes
- Allegation required for initiation of below COP test	Yes	Yes, although DOC will automatically initiate a COP inquiry if below-COP sales were disregarded in the last segment including the firm
7. Preliminary Determinations/Results	Yes	Yes
- Withholding of Appraisement	Yes, if affirmative	not applicable (already in effect)
- Cash/Bond Requirement	Yes, if preliminary affirmative (at preliminary rates)	Not changed; previous rates remain in effect
8. Verification	After the preliminary determination	Generally before the preliminary results

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Action	Investigations	ARs
	Required in all cases	Required only: - if requested, with cause - if not conducted for two prior reviews - before revoking order in whole or in part
9. Critical Circumstances Determinations	Yes	No
10. Written Comments, Briefs, Rebuttals	Yes	Yes
11. Hearing	If requested	If requested
12. Final Determination/ Review Results	Yes	Yes
- Cash/Bond Requirement	Yes, if affirmative	Cash only, at new rate
13. Refer case to ITC for injury determination	Yes, if affirmative	Anti-circumvention inquiries only
14. Publish Order	Yes, if DOC finds sales at less than fair value and ITC finds injury	No, already in effect
15. Litigation	If challenged in Court, assists CCIA	Same

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Action	Investigations	ARs
16. Duty-Assessment Instructions to Customs	No	Yes
17. Anti-circumvention Inquiries	No	Yes
18. Changed-Circumstances Reviews	No	Yes
19. Scope Rulings	Only in context of investigation	When requested - usually conducted separately from reviews
20. Revocation	No	Yes
21. Suspension Agreements	Establish	Review
22. Advise Customs on Protests of Assessed Duties	No	Yes
23. Five-Year Revocations	No	Yes
24. Requests for Review	No	Yes